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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ANGELO NAVARETTE, Plaintiff and Appellant, v. LOS ANGELES UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents.	B214060 (Los Angeles County Super. Ct. No. BC361703)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kenneth R. Freeman, Judge. Affirmed.

Angelo Navarette, in pro. per., for Plaintiff and Appellant.

Ivie, McNeil & Wyatt, Rupert A. Byrdsong and Diana Taing for Defendants and Respondents.

Following the termination of his employment by the Los Angeles Unified School District (LAUSD) Angelo Navarette sued his former employer and a supervisor. He appeals from the judgment of dismissal following the trial court's grant of LAUSD's motion for judgment on the pleadings. We affirm.

BACKGROUND

Navarette began working for LAUSD as a gardener in July 2001. LAUSD terminated his employment on October 25, 2006.

On November 13, 2006, Navarette, acting in propria persona, sued LAUSD and a supervisor. On March 19, 2007, he filed a second amended complaint alleging state law claims and a federal claim for retaliation and civil rights violations pursuant to Title VII. In April 2007, LAUSD removed the case to federal court.[1] In July 2007, the district court dismissed Navarette's Title VII retaliation and civil rights claims and remanded the state law claims to state court.

On July 7, 2008, the Department of Fair Employment and Housing (DFEH) issued Navarette a right-to-sue letter.

On September 29, 2008, Navarette filed a third amended complaint. His complaint sought damages and asserted that the "[s]tatutory basis for the liability damages against the defendants, L.A.U.S.D., a public entity and Doug Anderson, an individual, for retaliation against the Plaintiff [,] violation of Labor Code 1102.5 (whistle blowing) which all led to Plaintiff's wrongful termination while out on disability."

Under "Statement of Facts" he alleged:

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[1] On April 8, 2008, the district court held a hearing for the purpose of determining whether Navarette had exhausted administrative remedies before filing suit. At the hearing Navarette conceded, and the district court thereafter found, that he had not filed a complaint with either the Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC) and had similarly failed to file a claim under the Government Claims Act with LAUSD before filing suit.

"A. Doug Anderson, Defendant, pointed and touched Plaintiff's nose, in which Plaintiff replied 'Get your finger out of my face', to which [D]efendant replied 'I can suspend you for two (2) weeks without pay.' Witness to action committed perjury.

"B. Plaintiff denied transfer to another work site and safety equipment to which the Plaintiff repeatedly requested.

"C. Plaintiff was falsely accused of sexual harassment, which caused Plaintiff to seek psychiatric care . . . due to stress.

"D. Plaintiff was falsely accused of threatening employees, while other employees threatened to 'blow off Plaintiff['s] head.' Threatening phone calls at Plaintiff['s] home.

"E. Plaintiff was defamed by . . . (a L.A.U.S.D. investigator) by stating that [P]laintiff was guilty of all charges and she would make sure he was prosecuted to the fullest. That [P]laintiff was a bully and didn't have any friends.

"F. Plaintiff was falsely accused of taking school equipment, none of which was ever proven.

"G. Plaintiff was assigned to administrative work sites, where personnel could watch him.

"H. Plaintiff was given a new partner every two or three months to train.

"I. During [the] disciplinary hearing, Defendants refused Plaintiff's rights to have [P]laintiff's witnesses appear and testify, violating [P]laintiff's due process. Defendants intentionally gave false testimony against Plaintiff also in violation of due process.

"J. Plaintiff was unjustly directed to Anger Management course, which he complied and completed.

"K. Plaintiff was denied reports of incidents between [P]laintiff and [M.C.] by school police, thus prohibiting [P]laintiff from obtaining witness's name.

"L. Plaintiff was given a restraining notice to stay off all Defendant's school property, thus violating [P]laintiff's rights to come and go.

"M. Defendants terminated all medical and health benefits, causing Plaintiff mental and physical stress and humiliation.

"N. Defendants L.A.U.S.D. and Doug Anderson are in violation of Labor Code Section 98.6 by engaging in the following practices: RETALIATION, DISCRIMINATION, HARASSMENT, WRONGFUL TERMINATION."

The first cause of action incorporated the earlier allegations and stated that "Defendants . . . retaliated against Plaintiff because Plaintiff opposed practices prohibited by the Fair Employment and Housing Act, Cal-Osha and Labor Commission" but stated no factual allegations to support those claims. The second cause of action stated "Defendants retaliated against Plaintiff because Plaintiff had complained about violations of law including corruption within the department, unsanitary conditions, working in bio-hazard material, and wasteful management, and in trying to defend himself against false charges and accusations, nepotism, and the using of some employees to landscape the yards of various supervisors."

On October 15, 2008, LAUSD moved for judgment on the pleadings. Navarette filed opposition. A copy of LAUSD's motion is not part of the record on appeal. Nor does the appellate record contain a reporter's transcript of the hearing on the motion. On December 9, 2008, the court granted LAUSD's motion for judgment on the pleadings and dismissed the action. This appeal followed.

DISCUSSION

Standard of Review

A motion for judgment on the pleadings performs the function of a general demurrer and the standard of appellate review of a judgment on the pleadings is the same as of a judgment following the sustaining of a demurrer. (*Gami v. Mullikin Medical Center* (1993) 18 Cal.App.4th 870, 876.) We liberally construe the pleadings to determine if any claim is stated. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

Judgment on the Pleadings

As noted, Navarette did not designate LAUSD's motion for judgment on the pleadings for inclusion in the record on appeal and did not include a reporter's transcript

of the hearing on LAUSD's motion. We are thus unaware of the grounds LAUSD urged in support of its motion, arguments made by the parties at the hearing, or the trial court's reasoning in granting LAUSD's motion. We have, nevertheless, reviewed the factual allegations of Navarette's third and operative complaint to determine whether they stated facts sufficient to constitute a cause of action. We disregarded contentions, deductions or conclusions of fact or law as required. (*Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at p. 1126.)

A liberal construction of the factual allegations shows that the third amended complaint at best stated a claim for retaliation for "whistleblowing" activities in violation of Labor Code section 1102.5.[2] Although Navarette does not allege to whom he complained about the violations of law, applying a liberal construction to the pleadings, we give him the benefit of assuming that he could allege that he "complained" to an appropriate party regarding these matters.

These factual allegations alone, however, are insufficient to state a cause of action against LAUSD. Because LAUSD is a public entity subject to the Government Claims Act (*V.C. v. Los Angeles Unified School Dist*. (2006) 139 Cal.App.4th 499, 504), Navarette was required, but failed, to allege compliance with, or excused performance under, the Government Claims Act which is an "'"element[] of [his] cause of action and condition[] precedent to the maintenance of the action"' [citation]." (*State of California v. Superior Court (Bodde*) (2004) 32 Cal.4th 1234, 1240, italics omitted.)

Government Code section 905 requires the presentation of "all claims for money or damages against local public entities," subject to exceptions not relevant here. Claims for personal injury and property damage must be presented within six months after accrual and all other claims must be presented within a year. (Gov. Code, § 911.2.)

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2 Labor Code section 1102.5, subdivision (b) provides that "[a]n employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation."

However, "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon . . . or has been deemed to have been rejected . . . ." (Gov. Code, § 945.4.) Under these statutes, failure to timely present a claim for money or damages to a public entity "'bars a plaintiff from filing a lawsuit against that entity.' [Citation.]" (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738.)

Navarette's third amended complaint sought $5 million in damages from LAUSD—a governmental entity—but did not allege compliance with the Government Claims Act or allege facts excusing compliance with the claims presentation requirement. His complaint was thus subject to a demurrer and dismissal "for failure to state facts sufficient to constitute a cause of action." (*State of California v. Superior Court (Bodde*), *supra,* 32 Cal.4th at p. 1239.)

Because Navarette did not and cannot allege that he satisfied the Government Claims Act's prerequisites for filing suit against LAUSD, the trial court properly granted judgment on the pleadings and dismissed the action.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J. JOHNSON, J.